

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Willie James Crump, Lamont McGee,
and Tierre Caldwell,

Plaintiffs,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**
Civil No. 16-1838 ADM/BRT

Minnesota Department of Corrections;
Commissioner Tom Roy; Terry Burns,
Supervisor I.C.W.C.; and Crew Leader
Brandon Thidauox,

Defendants.

Willie James Crump, pro se.

This matter is before the undersigned United States District Judge for consideration of Willie James Crump's ("Crump") Objection [Docket No. 6] to Magistrate Judge Becky R. Thorson's August 24, 2016 Report and Recommendation [Docket No. 5] ("R&R"). Judge Thorson recommends that Plaintiffs Crump, Lamont McGee, and Tierre Caldwell's (the "Plaintiffs") 42 U.S.C. § 1983 Complaint [Docket No. 1] against the Minnesota Department of Corrections ("DOC"), DOC Commissioner Tom Roy, and two correctional officers (the "Defendants") be dismissed.

Plaintiffs' Complaint alleges violations of the Prison Rape Elimination Act ("PREA"), the DOC's PREA policies, and the DOC's officer code of conduct. See Compl. Specifically, Plaintiffs allege that their work supervisor, Brandon Thidauox ("Thidauox"), repeatedly subjected them to homosexual slurs, comments, or gestures that caused discomfort. Id. at 1–5. Plaintiffs characterize Thidauox's conduct as sexual harassment. Id. None of the Plaintiffs paid

the required \$400 filing fee for their civil action.

Crump did file an Application to Proceed without Prepaying Fees or Costs [Docket No. 2] (“Fee Petition”). On July 22, 2016, Judge Thorson issued an Order [Docket No. 4] that denied Crump’s Fee Petition and identified a number of problems with Plaintiffs’ Complaint. Most significantly, there is a lack of a factual basis for a plausible federal cause of action against any of the Defendants. Id. 3–9. The Order further stated that the Complaint failed to comply with Federal Rule of Civil Procedure 11(a) because it was not signed by any Plaintiff. Id. at 3. Judge Thorson concluded that unless Plaintiffs filed an amended complaint that complies with Federal Rules of Civil Procedure 8(a) and 11(a) by August 11, 2016, the action would likely be dismissed for failure to prosecute. Id. at 10.

An amended complaint was never filed. On August 24, 2016, Judge Thorson issued a Report and Recommendation (“R&R”) recommending that Plaintiffs’ Complaint be dismissed without prejudice for failure to prosecute. On September 8, 2016, Crump filed an Objection [Docket No. 6] to the R&R.¹

In reviewing a magistrate judge's report and recommendation on a dispositive matter, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C); see also D. Minn. L.R. 72.2(b). A district judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id.

Crump’s Objection, which is signed, does not take issue with any specific portion of

¹ Lamont McGee and Tierre Caldwell did not object to the R&R and have not paid the filing fee or submitted an application to proceed *in forma pauperis*.

Judge Thorson's R&R. Rather, Crump merely recites the same allegations set forth in the original Complaint that Judge Thorson deemed defective. Since Crump's Objection does not address the substance of the R&R, it does not provide a basis for modifying or rejecting any portion of the R&R.

Even if Crump's Objection was construed to be an Amended Complaint, the result is the same. Although pro se pleadings are to be construed "liberally," the facts alleged in the Objection are identical to those alleged in the Complaint. See In re Steward, 828 F.3d 672, 683 (8th Cir. 2016) (noting that "pro se pleadings are to be construed more liberally than those prepared by counsel"). Consistent with Judge Thorson's Order, Crump's filing does not allege facts that state a viable claim for relief.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Plaintiff Willie James Crump's Objection [Docket No. 6] to Magistrate Judge Becky R. Thorson's August 24, 2016 Report and Recommendation [Docket No. 5] is **OVERRULED**;
2. The Report and Recommendation [Docket No. 5] is **ADOPTED**;
3. The Complaint [Docket No. 1] is **DISMISSED**.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: October 3, 2016.